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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1389**

In the Matter of the Claim for Benefits by Robert Joseph Mercado.

**Filed June 9, 2009
Affirmed
Peterson, Judge**

Minnesota Public Safety Officers Benefits Eligibility Panel

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Considered and decided by Peterson, Presiding Judge; Klaphake, Judge; and
Harten, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from an order by the Public Safety Officer's Benefit Eligibility Panel denying relator's claim for continuing health benefits under Minn. Stat. § 299A.465 (2006), relator argues that the panel erred in determining that he failed to show that his occupational duties or professional responsibilities put him at risk for the disabling injury that resulted in his retirement. We affirm.

FACTS

Relator Robert J. Mercado was employed as a police officer by the St. Paul Police Department from 1978 until June 2007. Before becoming employed as a police officer, relator suffered three sports-related injuries to his knees. Relator suffered three more knee injuries during his employment as a police officer. In March 1987, relator injured his right knee when he slipped on wet grass while running down an embankment to investigate illegal fire activity. In October 1992, relator injured his left knee while performing leg presses in the police gym. In November 2001, relator injured his right knee when he slipped while walking down steps at the K-9 training facility.

In June 2007, relator underwent a total left-knee replacement, and in August 2007, he underwent a total right-knee replacement. Relator presented evidence that he was unable to perform his work as a police commander following the knee replacements.

Timothy J. Panek, M.D., opined:

The primary concern I have is that within his job description, [relator] is expected to be exposed to and readily available to assist some times in a physical manner with any suspects

brought in to his department under his command. This is not an appropriate environment for him to be working in with his knee replacements. He would be at potential risk for significant damage to his knees and potentially permanent damage that could lead to poor outcome with regard to his knees.

Independent medical examiner, Michael J. D'Amato, M.D., opined:

[Relator] is clearly unable to physically perform his job duties as outlined in the job description provided. Specifically, there is the requirement for contact with criminals and apprehended individuals. Any such contact does create an environment of potential altercation for which [relator] cannot safely participate in given his bilateral knee conditions. In addition, he would not be able to inspect the headquarter building complex periodically to ensure physical security as it is quite possible that during such inspections any evidence of compromise of the physical security of the building would also result in a potential situation that would be unsafe for [relator] to participate in.

There is evidence in the record that the knee replacements did not result from the injuries to relator's knees during his employment but rather from a preexisting degenerative knee condition. An October 1992 report from an orthopedic clinic notes that relator had "significant degenerative arthritis of both knees, the left being somewhat worse than the right knee." A December 2001 report by Jack Drogot, M.D., states:

DIAGNOSTICS: I reviewed the MRI scan films, which indicate severe degenerative changes in the medial compartment and a small effusion. His findings are advanced.

IMPRESSION:

1. Degenerative joint disease of the [right] knee, pre-existing
2. Temporary aggravation to this condition.

In his report, D'Amato describes the preemployment injuries to relator's knees:

In my opinion, [relator] suffered multiple injuries to both knees. With regard to the left knee, he initially injured the left knee in 1974 suffering an ACL injury and lateral meniscal tear as documented at the time of his surgery on September 24, 1974. He then went on to suffer another injury to the left knee in 1975 and another injury in 1976. The injury in 1975 appears to have been an aggravation of his preexisting ACL deficiency. In 1976 he, in addition, injured his medial collateral ligament. In 1977 he underwent repair of his medial collateral ligament and a Slocum procedure on the left knee.

D'Amato then goes on to describe the injuries that relator suffered during his employment as a police officer:

He then injured the left knee again in 1992 doing squats at work. At that time, he was already demonstrating significant degenerative arthritis in both knees on his x-rays. His surgery on the left knee on October 21, 1992 demonstrated significant degenerative changes in the knee in addition to the ACL deficiency. He then eventually underwent a total knee replacement on the left knee for his degenerative disease.

... He ... reinjured the [right] knee in March 1987 when he twisted his right knee chasing a suspect down an embankment. The First Report of injury is available from that time period although no further treatment records are available. He states he did undergo another surgery at that time, but, again, no operative report is available documenting what injury exactly occurred. He was then injured again in November 2001 when he slipped on steps, twisting his right knee. This injury occurred at work. His evaluation at that time showed clear preexisting degenerative joint disease. An MRI obtained on December 7, 2001 also demonstrated chronic ACL deficiency in addition to the severe preexisting degenerative joint disease and evidence of near complete prior medial meniscectomy and prior lateral meniscectomy consistent with his history of prior knee injuries and surgery on the right. He ultimately went onto a right total knee replacement as the result of his degenerative joint disease.

....

[Relator] clearly has evidence of preexisting knee conditions and injuries predating his work for the police department. He began his work for the police department in 1978. He had clear preexisting left knee injuries dating to 1974 and 1977, which I believe are the primary contributing factors for his ultimate left knee progression to advanced degenerative joint disease and the need for his left total knee replacement, which is ultimately the disabling factor with regards to his left knee. I believe any work injuries or activities did not cause or result in any significant progression of his left knee condition, but were merely temporary aggravations, specifically the 1992 event.

With regard to [relator's] right knee, he again clearly has a documented injury in 1977 predating his work at the police department. At that time he had a traumatic hemarthrosis which would be consistent with his future findings on MRI in 2001 of a chronic ACL disruption. He also reports a history of a meniscectomy around that time period. Again, this cannot be confirmed, but would also be consistent with the findings on the MRI of 2001 He then had a work related injury to the right knee in 1987. There are limited records indicating exactly the extent of the injury and the treatment at that time. . . . Therefore, in my opinion, based on the records available, there would be evidence of a preexisting condition and injury to the right knee that would have contributed ultimately to his disability, but there is also evidence of a work injury in 1987 that could have contributed to his disability as well. However, given the totality of his bilateral knee conditions, the fact that the left knee condition is in no doubt the result of preexisting knee injuries unrelated to his work activities, and given the fact that he had a significant preexisting injury to his right knee and possibly a secondarily contributing injury to his right knee as the result of his work activities, I do believe that in total his disability is unrelated to his work activities and ultimately the result of his preexisting conditions.

Relator was awarded a duty-related disability pension by the Public Employees Retirement Association of Minnesota. He then applied for continued health insurance

benefits under Minn. Stat. § 299A.465 (2006). The Minnesota Public Safety Officers Eligibility Panel denied relator's application based on the conclusions that relator's occupational duties and professional responsibilities did not put him at risk for the injuries he sustained and that relator's injuries did not lead to his separation from service. This appeal followed.

D E C I S I O N

This court reviews quasi-judicial administrative decisions by writ of certiorari. *Dietz v. Dodge County*, 487 N.W.2d 237, 239 n.3 (Minn. 1992). This court will affirm an administrative agency's decision unless "the agency committed an error of law, made arbitrary and capricious findings or conclusions, or otherwise ruled in a manner unsupported by the record." *In re Claim for Benefits by Hagert*, 730 N.W.2d 546, 548 (Minn. App. 2007).

The statute governing the provision of health coverage to disabled police officers states:

This subdivision applies when a peace officer or firefighter suffers a disabling injury that:

- (1) results in the officer's . . . retirement or separation from service;
- (2) occurs while the officer . . . is acting in the course and scope of duties as a peace officer . . . ; and
- (3) the officer . . . has been approved to receive the officer's or firefighter's duty-related disability pension.

Minn. Stat. § 299A.465, subd. 1(a) (2006) (emphasis added).

Whenever a peace officer . . . has been approved to receive a duty-related disability pension, the officer . . . may apply to the panel established in subdivision 7 for a determination of whether or not the officer . . . meets the

requirements in subdivision 1, paragraph (a), clause (2). *In making this decision, the panel shall determine whether or not the officer's . . . occupational duties or professional responsibilities put the officer . . . at risk for the type of illness or injury actually sustained.*

Minn. Stat. § 299A.465, subd. 6(a) (2006) (emphasis added).

This court has held that

[t]he plain language of section 299A.465 creates a two-part test for determining whether a retired peace officer is entitled to receive continued health-insurance benefits: (1) the officer must be approved to receive a duty-related disability pension; and (2) the officer's occupational duties or professional responsibilities must have put the officer at risk for the type of injury actually sustained.

Hagert, 730 N.W.2d at 549. The fact that a disabling injury aggravates a preexisting condition does not disqualify an officer from continuing health benefits under Minn. Stat. § 299A.465. *In re Claim for Benefits by Meuleners*, 725 N.W.2d 121, 124 (Minn. App. 2006).

In its written order, the eligibility panel found, “[Relator] separated from service with the St. Paul Police Department because the condition of his knees did not permit him to continue working as a Commander.” At the hearing before the eligibility panel, shortly before orally denying relator’s claim, a panel member stated that he was relying on D’Amato’s report to support the denial of benefits to relator. Another panel member stated that he did not believe that relator’s job duties or responsibilities “put him at risk for the type of injury that was actually sustained.” From these comments and the finding in the written order, we can infer that the panel concluded that the condition that did not permit appellant to continue working at his job was the replacement of his knees and that

the panel denied relator's claim based on the lack of evidence connecting the knee injuries that occurred during relator's employment to the degenerative joint disease that resulted in the knee replacements.

The record supports the determination that the disabling injury suffered by relator was the replacement of his knees. After relator's knees were replaced, he could no longer do his job as a police commander because of the risk that he could become involved in activities that his replacement knees could not withstand. Relator's argument focuses on whether his occupational duties or professional responsibilities put him at risk for the knee injuries that he suffered in 1987, 1992, and 2001. It appears from the record that all three of those injuries occurred while relator was acting in the course and scope of his duties as a police officer.¹ But even if relator's occupational duties or professional responsibilities put him at risk for those injuries, relator failed to present evidence that demonstrates that any of those three injuries led to relator's disabling knee replacements. In other words, relator has shown that his occupational duties or professional responsibilities put him at risk for the types of injuries he suffered on those three occasions, but he has not shown that those three injuries brought about his disabling injury.

There is evidence that shows that the knee replacements resulted from degenerative joint disease, and the evidence does not show that the three knee injuries

¹ The record does not clearly indicate that relator was performing occupational duties when he slipped while walking down stairs at the K-9 unit, but for purposes of this opinion, we will assume that he was performing occupational duties when he slipped.

that occurred during relator's employment caused or aggravated the degenerative joint disease. D'Amato concluded that the injuries that occurred during relator's employment were unrelated to the knee replacements. D'Amato noted that there was a possibility that the 1987 injury secondarily contributed to the right-knee replacement, but he could not make a conclusive determination because he was not provided with medical records relating to that injury. The evidence presented by relator at the hearing before the panel is consistent with D'Amato's conclusion and does not demonstrate that the 1987 injury contributed to the right-knee replacement.

Because the evidence in the record does not show a connection between the injuries that occurred during relator's employment and the disabling knee replacements, relator has not shown that the panel committed an error of law, made arbitrary and capricious findings or conclusions, or otherwise ruled in a manner unsupported by the record. Therefore, we affirm the panel's decision.

Affirmed.